

Federal Acquisition Regulation

32.801

cost in the contract, the contracting officer shall ensure availability of funds for directed actions. The contracting officer may direct that any increase in the estimated cost or amount allotted to a contract be used for the sole purpose of funding termination or other specified expenses.

(c) Government personnel encouraging a contractor to continue work in the absence of funds will incur a violation of Revised Statutes Section 3679 (31 U.S.C. 1341) that may subject the violator to civil or criminal penalties.

[48 FR 42328, Sept. 19, 1983, as amended at 51 FR 2665, Jan. 17, 1986; 72 FR 27384, May 15, 2007]

32.705 Unenforceability of unauthorized obligations.

Many supplies or services are acquired subject to supplier license agreements. These are particularly common in information technology acquisitions, but they may apply to any supply or service. For example, computer software and services delivered through the internet (web services) are often subject to license agreements, referred to as End User License Agreements (EULA), Terms of Service (TOS), or other similar legal instruments or agreements. Many of these agreements contain indemnification clauses that are inconsistent with Federal law and unenforceable, but which could create a violation of the Anti-Deficiency Act (31 U.S.C. 1341) if agreed to by the Government.

[78 FR 37688, June 21, 2013]

32.706 Contract clauses.

[48 FR 42328, Sept. 19, 1983. Redesignated at 78 FR 37688, June 21, 2013]

32.706-1 Clauses for contracting in advance of funds.

(a) Insert the clause at 52.232-18, Availability of Funds, in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contract action will be initiated before the funds are available.

(b) The contracting officer shall insert the clause at 52.232-19, Availability of Funds for the Next Fiscal Year, in solicitations and contracts if a one-year indefinite-quantity or require-

ments contract for services is contemplated and the contract—

(1) Is funded by annual appropriations; and

(2) Is to extend beyond the initial fiscal year (see 32.703-2(b)).

[48 FR 42328, Sept. 19, 1983, as amended at 63 FR 58602, Oct. 30, 1998; 67 FR 13054, Mar. 20, 2002. Redesignated at 78 FR 37688, June 21, 2013]

32.706-2 Clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 52.232-20, Limitation of Cost, in solicitations and contracts if a fully funded cost-reimbursement contract is contemplated, whether or not the contract provides for payment of a fee.

(b) The contracting officer shall insert the clause at 52.232-22, Limitation of Funds, in solicitations and contracts if an incrementally funded cost-reimbursement contract is contemplated.

[48 FR 42328, Sept. 19, 1983, as amended at 72 FR 27385, May 15, 2007. Redesignated at 78 FR 37688, June 21, 2013]

32.706-3 Clause for unenforceability of unauthorized obligations.

The contracting officer shall insert the clause at 52.232-39, Unenforceability of Unauthorized Obligations in all solicitations and contracts.

[78 FR 37689, June 21, 2013]

Subpart 32.8—Assignment of Claims

32.800 Scope of subpart.

This subpart prescribes policies and procedures for the assignment of claims under the Assignment of Claims Act of 1940, as amended, (31 U.S.C. 3727, 41 U.S.C. 6305) (hereafter referred to as *the Act*).

[48 FR 42328, Sept. 19, 1983, as amended at 51 FR 2665, Jan. 17, 1986; 79 FR 24212, Apr. 29, 2014]

32.801 Definitions.

Designated agency, as used in this subpart, means any department or agency of the executive branch of the United States Government (see 32.803(d)).